*** THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY**

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+ WRIT PETITION NO. 11229 of 2005

% 23-08-2005

B.Kantha Reddy PETITIONER

VS.

$ The Mandal Development Officer-cum-Additional

District Election Authority, Manopad Mandal,

Mahabubnagar District and others RESPONDENTS

! COUNSEL FOR PETITIONER: MR.C.B.RAMMOHAN REDDY

^ COUNSEL FOR THE RESPONDENTS NOS. 1 TO 3: GOVERNMENT PLEADER FOR PANCHAYAT RAJ AND RURAL DEVELOPMENT

^ COUNSEL FOR THE RESPONDENT NO.4: B.SAIRAM GOUD

< Gist:

> Head Note:

? CITATIONS:

1 2003 (5) ALT 1

2 2004 (5) ALT 386

3 1995 (1) ALD 98

4 1995 (2) ALD 632

5 1998 (6) ALT 197

6 1999 (5) ALT 535

7 1999 (5) ALT 516

8 1999 (5) ALT 715

9 2004 (5) ALT 400

10 AIR 1995 SC 350

11 AIR 2001 KARNATAKA 120

12 AIR 1964 SC 477

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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Writ Petition No.11229 of 2005

Dated 23-08-2005

Between:

B.Kantha Reddy, S/o Venkanna,

Aged about 35 years, Sarpanch,

Amaravai Grampanchayat, Amaravai

Village, Manopad Mandal, Mahababnagar District. .. Petitioner.

And

The Mandal Development Officer-cum-Additional

District Election Authority, Manopad Mandal,

Mahabubnagar District and others .. Respondents.

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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Writ Petition No.11229 of 2005

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ORDER:

This writ petition has been filed by B.Kantha Reddy seeking a Writ of Certiorari to quash the judgment and decree dated 04-05-2005 passed in O.P.No.6 of 2001 on the file of the Junior Civil Judge (Election Tribunal under A.P. Gram Panchayat Act, 1994), Alampur, Mahaboobnagar District. By the impugned order, the learned Election Tribunal set aside the election of the petitioner as Sarpanch of Amaravai village and further declared E.Prakash Goud-fourth respondent in the writ petition as duly elected Sarpanch of Amaravai village.

Election notification was issued by the State Election Commission, Hyderabad, to the Sarpanch post of Amaravai village. B.Kantha Reddy-writ petitioner and E.Prakash Goud-fourth respondent filed nominations to the Sarpanch post of Amaravai village. The fourth respondent raised objection before the Assistant Election Officer-second respondent with regard to eligibility of the writ petitioner to contest for the post of Sarpanch of Amaravai village, since he has three children as on the date of election and his last child having born on 05-11-1996. The Assistant Election Officer did not verify the objection raised by the fourth respondent and advised him to file O.P., if he has any proof of allegation, after declaration of results. The fourth respondent was allotted auto symbol and the writ petitioner was allotted carrom board symbol in the said election. The writ petitioner was declared as elected Sarpanch of Amaravai village by the Mandal Development Officer-cum-Additional District Election Authority, Manopad Mandal, Mahaboobnagar District-first respondent. Therefore, the fourth respondent filed O.P.No.6 of 2001 before the Junior Civil Judge at Alampur, Mahaboobnagar District, seeking to declare the writ

petitioner as disqualified from contesting the election and declare the fourth respondent herein as Sarpanch of Amaravai village.

The main ground of challenge to the election of the petitioner was that he incurred disqualification under Section 19 (3) of the A.P. Panchayat Raj Act, 1994 (for short 'the Act') and that his wife gave birth to third child on 05-11-1996 at C.Belagal village and mandal of Kurnool District.

The petitioner resisted the O.P. It was his case that his wife gave birth to third child on 29-12-1994 and therefore, he did not incur any disqualification under Section 19 (3) of the Act. It was his case that he did not suppress any material fact and the Assistant Election Officer has accepted his nomination having been duly satisfied about the compliance with various provisions of the Act and Rules made thereunder.

The learned Junior Civil Judge at Alampur-Election Tribunal having taken into account the pleadings of the parties framed the following issues:

"1. Whether the wife of the 1st respondent Venkateshwaramma is also called as Bojjamma and the birth extract filed by the petitioner is pertaining to the child of 1st respondent and his wife?

2. Whether the 3rd child of the 1st respondent is born on 29-12-1994 as alleged by the 1st respondent or on 05-11-1996 as alleged by the petitioner beyond the period of one year after the commencement of the APPR Act?

3. Whether the 1st respondent is disqualified to contest for the post of Amaravai village and the election of the 1st respondent is to be declared as null and void?

4. Whether the petitioner is entitled for declaration as the petitioner is elected Sarpanch of Amaravai Village?

5. To what relief?"

On behalf of the fourth respondent, who is the petitioner in O.P., he got

himself examined as P.W.1, besides examining M.Narasanna Goud, former Village Administrative Officer of Amaravai village as P.W.2, P.Shankar Reddy, former Village Administrative Officer of C.Belagal village as P.W.3 and B.Anand Rao, Mandal Revenue Officer of C.Belagal Mandal as P.W.4 and marked Exs.A1 to A6 and Ex.X1 on his behalf.

The petitioner, first respondent in the O.P., besides examining himself as R.W.1, examined R.S.Subramanyam, Revenue Inspector of C.Belagal Mandal as R.W.2 and marked Exs.B1 and B2 on his behalf.

On appreciation of the oral and documentary evidence placed before it, the learned Election Tribunal through its order dated 04-05-2005 has taken the view that the writ petitioner has incurred disqualification under Section 19 (3) of the Act and accordingly has set aside his election. The learned Tribunal declared that the fourth respondent shall be treated as having been elected. Hence, the writ petition.

Heard Sri C.B.Rammohan Reddy, the learned counsel for the petitioner, B.Sairam Goud, the learned counsel appearing for the fourth respondent, and the learned Government Pleader for Panchayat Raj and Rural Development appearing for the respondents 1 to 3.

The learned counsel appearing for the petitioner submits that the wife of the petitioner gave birth to third child on 29-12-1994 within a year of the commencement of the Act, i.e., 30-05-1994 and therefore the petitioner did not incur any disqualification to contest for the post of Sarpanch under the provisions of the Act. He further submits that the contents of the Ex.B1 has been properly proved by examining Revenue Inspector of C.Belagal Mandal, through whom it has been marked. It is also submitted by him that the fourth respondent, who is the petitioner in the O.P., failed to establish that wife of the petitioner was called as Bojjamma and that the wife of the petitioner viz., Venkateswaramma-alias-Bojjamma has given birth to a third child on 05-11-1996. His further submission would be that the evidence of P.Ws.2 and 3 is only hearsay evidence and therefore no reliance can be placed on their testimony. In nutshell, his submission is that Exs.A4 and X1 are not properly proved and therefore no reliance can be placed on them. He refers Sections 35, 74, 79 and 80 of the Indian Evidence Act to buttress his submissions that the document placed on record by the writ petitioner to prove that wife of the petitioner has given

birth to the third child on 29-12-1994 are worthy of acceptance.

He also placed reliance on the decisions of our High Court in BHUKYA BUJJI v. BHUKYA SARASWATHI and J.PUSHPALATHA v. ELECTION TRIBUNAL, BHONGIR.

In the first cited decision it has been held that entries made in birth register basing upon hearsay evidence are neither admissible nor relevant.

In paragraph 15 of the first cited decision it has been observed as follows:

> "15. The register is maintained under the provisions of the Registration of Births and Deaths Act, 1969 (Central Act No.18 of 1969). Section 35 of the Evidence Act provides that entries made in such a register in public record in performance of official duty relevant. Presumption of correctness is attached to such entries. Therefore, on the evidence led, not only the extracts from register are admissible in evidence under Section 35 of Evidence Act, but presumption of regularity of official acts done in discharge of the public duties ought to have been raised under Section 114 of the Evidence Act. Evidence led by Respondent No.1 was neither relevant nor admissible under Section 50 of the Evidence Act. Though P.W.2 stated that he belongs to the same caste as that of the appellant, he was unable to give the approximate dates or months or years of birth of the other three children. His statement could not have been relied upon by the Election Tribunal being an interested person having fought election in support of Respondent No.1."

In the second cited decision it has been held that setting aside of election reverses the mandate of electorate and deprive the elected person of his office. Election, therefore, should not be set aside unless the contingencies are provided for under the relevant statutes are firmly and clinchingly established. If two views are possible, the one, which respects the verdict of the electorate should be preferred.

The learned Counsel appearing for the fourth respondent submits that the Election Tribunal has considered the evidence in right perspective and recorded a finding that the wife of the petitioner has given birth to third child on 05-11-1996 and therefore the said finding is not required to be interfered in the writ petition. He

further submits that the entries in Ex.X1-birth and death register and Ex.A4-birth extract have been properly proved through the evidence of P.Ws.2 to 4 and that the learned Tribunal is justified in relying on those entries as well as ocular testimony of P.Ws.2 to 4 to record a finding that the wife of the petitioner has given birth to a third child on 05-11-1996.

In support of his submissions, the learned Counsel appearing for the fourth respondent placed reliance on the decisions of our High Court in G.ANNAPURNAYYA v. K.APPALANARASIMHA-MURTHY & ORS., SRI JAGANNATHA SWAMYVARU, v. V.VENUGOPALANAIDU, SRINIVASULU vs. GOVT. OF A.P., D.SATHI REDDY vs. COMMISSIONER, PANCHAYAT RAJ, ARE GANGADHAR vs. ZILLA PRAJA PARISHAD, KARIMNAGAR AND OTHERS, B.K.PARTHASARATHI vs. GOVT. OF A.P., R.JAYALAKSHMAMMA v. ELECTION TRIBUNAL-CUM-SENIOR CIVIL JUDGE, the decision of Supreme Court in STATE OF MAHARASHTRA v. ADMANE ANITA MOTI, and the decision of Karnataka High Court in LAKSHMAMMA v. KAMALAMMA.

Both the counsel read the evidence of witnesses extensively in support of their respective submissions. Before dwelling on the rival contentions, I deem it appropriate to refer the decision of Supreme Court in SAYED YAKOOB vs. RADHAKRISHNAN with regard to scope of interference with order passed by the Tribunal, wherein the Supreme Court observed as under:

> "…A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior Courts or Tribunals without jurisdiction or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the fact of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari

> can be issued if it is shown that in recording the said finding the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence that would be regarded as an error of law which can be corrected by a writ of certiorari."

As a measure to control the growth of population, the A.P. State Legislature has included the incident of giving birth to more than two children as one of the grounds of disqualification. It is in the form of a disincentive. Sub-Section (3) of Section 19 of the Act reads as under:

> "A person having more than two children shall be disqualified for election or for continuing as member:
>
> Provided that the birth within one year from the date of commencement of the Andhra Pradesh Panchayat Raj Act, 1994 hereinafter in this clause referred to as the date of such commencement, of an additional child shall not be taken into consideration for the purposes of this clause:
>
> Provided further that a person having more than two children (excluding the child if any born within one year from the date of such commencement) shall not be disqualified under this clause for so long as the number of children he had on the date of such commencement does not increase:
>
> Provided also that the Government may direct that the disqualification in this Section shall not apply in respect of a person for reasons to be recorded in writing."

Constitutional validity of Section 19 (3) of the Act is raised in B.K.PARTHASARATHI's case (8 supra). A Division Bench of our Court upheld the constitutional validity of Section 19 (3) of the Act in the above referred decision.

From a reading of Section 19 (3) of the Act, it is evident that exemption is provided in respect of a child who born within one year from the date of commencement of the Act viz., 30-05-1994. While it is the case of fourth respondent that the third child of the petitioner was born on 05-11-1996, it is the case of the petitioner that the said child was born on 29-12-1994; it is around this fact that the entire controversy revolves.

In the election petition, fourth respondent alleged that the wife of the petitioner had

given birth to third child on 05-11-1996. It is specifically averred in the election petition that the wife of the writ petitioner is called as Venkateswaramma-alias-Bojjamma and that the said Bojjamma had given birth to a male child on 05-11-1996 at C.Belagal village.

I deem it appropriate to refer paragraph 6 of the election petition (O.P. No.6 of 2001) and it is thus:

> "It is humbly submitted that the respondent No.1 has got three children, his wife Venkateswaramma @ Bojjamma delivered 3rd child who is a male child on 05-11-1996 at C.Belagal village and Mandal of Kurnool District which is her native place. A Birth Extract issued by M.R.O. of C.Belagal, Kurnool District, is filed herewith for kind perusal of the Court. Subsequently, the wife of the respondent No.1 underwent family planning operation on 19-11-1997 at Government Hospital, Yemmiganur town, Yemmiganur Mandal of Kurnool District. By the time of this operation, the age of the last child was one year fourteen days. The sterilization Certificate bearing Tc.No.683 issued by the Civil Surgeon, Govt. Hospital, Yemmiganur is filed herewith for kind perusal of the Court. She was referred to Government Hospital, Yemmiganur, for undergoing family planning operation by the Medical Officer, Government Dispensary, C.Belagal village and mandal. The Certificate issued by Medical Officer, Government Upgraded Dispensary, C.Belagal of Kurnool District is also filed herewith for kind perusal of the Court. The last child name of the respondent No.1 as entered in school records is B.Muralidhar Reddy who is now studying in Nursery Class in Jaagruthi School, Manopad village and Mandal, Mahaboobnagar District. Thus, the respondent No.1 suffers from basic disqualification even to contest for any post in the election of Gramapanchayat."

The learned counsel appearing for the petitioner submits that the fourth respondent, having taken specific plea that Venkateswaramma, the wife of the petitioner, prior to the marriage was called as Bojjamma, failed to establish the fact that Venkateswaramma is also called as Bojjamma. He refers the evidence of P.Ws.2 and 3 to convince the Court that their evidence is only hearsay evidence with regard to alias name of the wife of the petitioner and therefore no credence can be given to their testimony. He refers the cross-examination of P.W.2 to show that the evidence of P.W.2 is only hearsay with regard to change of name of Bojjamma as Venkateswaramma at the time of the marriage. He also refers the evidence of P.W.3 to convince the Court that the entries made in the Ex.X1-birth and death register are made by P.W.3 on the evidence of Thalari Venkatramudu of C.Belagal village and

therefore Thalari Venkatramudu is the material witness to speak of the birth of the third child of the petitioner and since the said Thalari Venkatramudu has not been examined as witness, no credence can be given to the entries made in Ex.X1-birth and death register. While disputing the correctness of the entries of Ex.X1-birth and death register, the learned counsel laid emphasis on the entries appearing in Ex.B2-birth register to show that the petitioner's wife had given birth to third child on 29-12-1994. It is contended by him that Ex.B1-birth certificate has been issued by the competent authority under A.P. (Andhra Area) Registration of Births and Deaths Act, 1899, and therefore the presumption is required to be drawn with regard to correctness of entries therein.

Let me make myself clear that the petitioner is claiming benefit of proviso to Section 19 (3) of the Act on the ground that his wife gave birth to third child on 29-12-1994. When a person claims benefit under the proviso, it is for him to prove that he did not incur disqualification. The fact that the petitioner had three children as on the date of the election is not in dispute. But, the petitioner claims benefit under the proviso on the ground that the last child was born within one year of the commencement of the Act. In a such situation, it is for the petitioner to prove that he did not incur disqualification. Let me examine the evidence adduced by the petitioner to prove that he did not incur disqualification as on the date of the election. The writ petitioner got himself examined as R.W.1 and examined R.S.Subramanyam as R.W.2 and marked Exs.B1 and B2. Ex.B1 is the birth certificate issued by the M.R.O. on 27-07-2001. Ex.B2 is the birth register. Petitioner marked Exs.B1 and B2 through R.W.2.

It is useful to refer the evidence of R.W.2 in his own words and it is thus:

> "Examination-in-chief:- I am filing the Birth and Death register for the year 1994 pertaining to the C.Belagal Village and Mandal. In the register Sl.No.24 for the month December, 1994 the birth of the respondent's child by name Muralidhar was registered, in which the date of birth of the child is 29-12-1994 but date of registration is 30-12-1994. The Sl.No.24 in the register is marked as Ex.B2. The birth certificate of respondent's child i.e., Ex.B1, is issued as per the entries made in the Birth and Death register in the year 1994 of C.Belagal Mandal and Village.
>
> Cross-Examination by A.G.P. for R2 to R4 reported as nil by A.G.P.
>
> Cross-examination by petitioner's counsel:
>
> I do not know the entries made in the Birth Register. It is true the Birth Register is not signed by either informant or registering authority. It is true

after the end of the month when the Ex.B2 is registered it is not closed. It is true the M.R.O. is not specifically authorized me to produce Birth Register, but the M.R.O. orally instructed me to produce the register as such I brought the register to the Court. It is true I brought the register without any seal cover. It is true except in Sl.No.24 where the registration of the child of the respondent is made, the other column prior to the Column No.24 is not mention the name of the child. It is true the writings in Column No.24 is different with that of the other columns. The other 1 to 23 columns are written by appears to be one person. It is true there is possibility to made entry as per the wishes of the person who filled the column. It is true the entries in the birth register is not made as per rules, the informant and registering authority not signed after the registration."

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It is crystal clear from the evidence of R.W.2 that he is not the author of the entries in the Ex.B2-birth register. It is also transparent that the writing in column No.24 of Ex.B2 is different from that of other columns.

The learned Tribunal considering the entries made in Ex.B2-birth register, observed as follows:

"On perusal of the birth register 1994 of C.Belagal in the 1st part which contains the registration of birth for the month of December in Sl.No.24 a birth registration was made on 30-12-1994 to a male child born on 29-12-1994 name mentioned as Muralidhar. The father's name is shown as Kantha Reddy and mother name is shown as Venkateswaramma. The living children of the parents is shown as 3rd. But on perusal of Ex.B2 in the birth registration for the month December, 1994, the 1st column is mentioned for Sl.No., the 2nd column is for date of registration, 3rd and 6th columns are the date of birth, 4th column is mentioned for sex, male or female, 5th column is name of a child , 7th column is native of the parents, 8th to 20th columns are for the details of parents. The 21st and 22nd columns indicates the name of the informants, 24th column is meant for the signature of registering authority. But, at Sl.No.19 to 21 which show that there was a registration on 31-12-1994 to the birth of children born on 31-12-1994 and 21-12-1994. On perusal of the above three columns it is clear that the birth registration was made on 31-12-1994 to the children born on 31-12-1994 and prior to that. But, not after 31-12-1994."

On perusal of entries appearing at Sl.Nos.22 to 24 which entered after Sl.Nos.19 to 21 i.e., 31-12-2004, the learned Tribunal observed in paragraph 32 of the judgment as follows:

> "It is very un-natural when the entries at Sl.No.19 to 21 is made and registered on 31-12-1994, if any registration came to the notice of the registering authority they shall register on the subsequent dates that may be 1st January, 1995 onwards. But, suppressingly the date of registration is made on at Sl.No.22 to 24 as 26-12-1994, 27-12-1994 and 30-12-1994. But, the same Sl.Nos. are not signed by the neither informant nor the registering authority. As such, it is very doubtful to believe the entries made in Sl.Nos.22 to 24 in which the date of birth of 3rd child of the 1st respondent is mentioned after 31st December, 1994."

I too have gone through the entries in Ex.B2-birth register, certified copy of which is placed on record. The entry relating to the birth of the third child of the petitioner is found at Serial No.24. Date of Registration as noticed in column No.24 is 30-12-1994. Whereas, the dates of registration of the children mentioned in serial numbers 22 and 23 are 26-12-1994 and 27-12-1994. Any amount of doubt can be entertained on the entry made with regard to the birth of the third child of the petitioner in Ex.B2-birth register. The trial Court is justified in disbelieving the entries made in Ex.B2-birth register in respect of the date of birth of the third child of the petitioner. Once Ex.B2 is discarded, there is no evidence adduced by the petitioner to show that his wife gave birth to a third child on 29-12-1994. Though the counsel for the petitioner submitted lengthy arguments with regard to fourth respondent failing to establish that Venkateswaramma was called as Bojjamma prior to her marriage, I am not inclined to consider his arguments, since the petitioner himself failed to establish that his wife gave birth to third child on 29-12-1994. Once he fails to establish his plea that his wife gave birth to third child on 29-12-1994, he is not entitled to claim benefit of the proviso to Sub Section (3) of Section 19 of the Act. Consequence of which, he is

disqualified to contest for election to the post of Sarpanch. The learned Tribunal considered the evidence brought on record in right perspective and allowed the O.P. I do not see any valid ground to interfere with the order of the Election Tribunal.

In the result, the writ petition is devoid of merit and the same is hereby dismissed. No costs.

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B.SESHASAYANA REDDY, J.

Dated 23-08-2005.

Note: L.R. copy to be marked.

B/O

SKMR

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